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PATENT  
Customer Number 22,852  
Attorney Docket No. 5725.0654-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Gerard LANG et al. )  
Application No.: 09/600,134 ) Group Art Unit: 1751  
Filed: September 11, 2000 ) Examiner: Eisa B. ELHILO  
For: KERATINOUS FIBRE OXIDATION )  
DYEING COMPOSITION CONTAINING )  
A LACCASE AND DYEING METHOD )  
USING SAME )

**Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Sir:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON ERRONEOUS ISSUANCE OF NOTICE OF ABANDONMENT**

Applicants petition the Assistant Commissioner for Patents under the provisions of 37 C.F.R. § 181 to withdraw the holding of abandonment of this application based on the erroneous issuance of a Notice of Abandonment before two months had elapsed from the date of issuance of a Decision on Appeal. The required fee is enclosed.

Review of Applicants' application file indicates the following prosecution history:

1. Decision Appeal dated August 27, 2004 (copy enclosed); and
2. Notice of Abandonment dated September 14, 2004 (copy enclosed).

Applicants believe this Notice is in error because 37 CFR §1.197 and MPEP 1214.03 provides that the Applicants may file a request for rehearing within two months of the date of the Decision on Appeal. In this case, the date of the Decision was August 27, 2004. Therefore, Applicants have until October 27, 2004, to take action in response to this Decision.

Accordingly, Applicants respectfully request that the Office grant this petition to withdraw the holding of abandonment and allow the application to remain pending until at least October 27, 2004. Applicants request this correction so that they can file a continuation application under 37 CFR §1.53(b) during the pendency of the parent application.

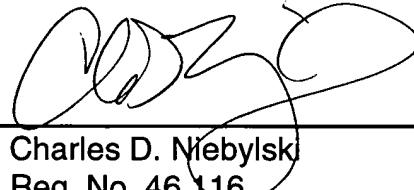
If the Office determines that additional fees are due in connection with the filing of this Petition, including any fees required for an extension of time under 37 CFR §1.136, such an extension is requested, and the Commissioner is authorized to charge any required fees to our Deposit Account No. 06-0916.

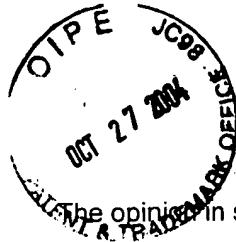
Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 27, 2004

By: \_\_\_\_\_

  
Charles D. Niebylski  
Reg. No. 46,116



TL1/MDS/CDN  
5725.0654

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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Paper No. 0

AUG 30 2004 UNITED STATES PATENT AND TRADEMARK OFFICE

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte GERARD LAND  
and JEAN COTTERET*

Appeal No. 2004-0795  
Application No. 09/600,134

MAILED

AUG 27 2004

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

HEARD: August 17, 2004

Before KIMLIN, TIMM and JEFFREY T. SMITH, *Administrative Patent Judges*.

JEFFREY T. SMITH, *Administrative Patent Judge*.

*Decision on appeal under 35 U.S.C. § 134*

Applicants appeal the decision of the Primary Examiner finally rejecting claims 22-58. We have jurisdiction under 35 U.S.C. § 134.<sup>1</sup>

<sup>1</sup> In rendering our decision we have considered Appellants' position present in the Brief, filed June 9, 2003, and the Reply Brief, filed October 28, 2003.

18-30-041

08/03/2004

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Application No. 09/600,134

### ***CITED REFERENCES***

As evidence of unpatentability, the Examiner relies on the following references:

Aaslyng	WO 97/19999	Jun. 5, 1997
Audousset et al. (Audousset)	5,769,903	Jun. 23, 1998

The Examiner rejected claims 22-58 under 35 U.S.C. § 103(a) over the combined teachings of Aaslyng and Audousset. (Answer, pp. 3-7).

### ***BACKGROUND***

Appellants' invention relates to a composition for the oxidation dyeing of keratinous fibers. The composition comprises at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts thereof and at least one enzyme of laccase type, dyeing methods using this composition and a kit comprising this composition. According to Appellants, Brief page 3, the dye formulations of this invention results in coloring without causing significant degradation of the keratinous fibers. Claim 22 which is representative of the claimed invention appears below:

22. A composition for the oxidation dyeing of keratinous fibers comprising:

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- (a) at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts of said at least one oxidation base; and
- (b) at least one enzyme of laccase type.

Appellants have indicated (Brief, pages 3-4) that for purposes of appeal the claims stand or fall together. We select claim 22 as representative of the claims on appeal. 37 CFR § 1.192 (c)(7) and (8) (2003).

#### ***DISCUSSION***

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellants in support of their respective positions. This review leads us to conclude that the Examiner's rejection is well founded.

The subject matter of claim 22 is directed to a composition for the oxidation dyeing of keratinous fibers. The composition comprises at least one oxidation base chosen from 3-methyl-4-aminophenol and acid addition salts thereof and at least one enzyme of laccase type.

Aaslyng discloses a composition for the oxidation dyeing of keratinous fibers. The composition comprises a dye precursor and at least one enzyme of laccase type. Aaslyng discloses that the "dye precursor(s) may be (an) aromatic compound(s) belonging to one of three major chemical families: the diamines,

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aminophenols (or amino-naphtols) and the phenols." (Page 9, II. 15-17). Aaslyng does not exemplify the compound 4-amino-3methylphenol. The Examiner cited the Audousset reference to teach that compound 4-amino-3methylphenol is a known oxidative dye precursor. (Answer, p. 6). The Examiner concluded that the use of the known compound 4-amino-3-methylphenol as a dye precursor in the formulation of Aaslyng would have been obvious to a person of ordinary skill in the art. (Answer, p. 6).

Appellants argue that Aaslyng "discloses the singular para-aminophenol as a species of oxidation base, rather than the plural genus of para-aminophenols". (Brief, p. 6). Further, Appellants argue that in light of Aaslyng's disclosure of a singular para-aminophenol specie, there is no motivation to select the 4-amino-3-methylphenol compound from the teachings of Audousset. (Brief, pp. 9-10).

Appellants' arguments regarding the suitability of using the compound 4-amino-3methylphenol as a dye precursor in Aaslyng are not persuasive because of the disclosure in Aaslyng cited above. A person of ordinary skill in the art would have reasonably expected, based on the disclosure in Aaslyng, that compounds within the genus of aminophenols would have been suitable for use an oxidative dye precursor. This would have included the compound 4-amino-3methylphenol. "For obviousness under § 103, all that is required is a reasonable expectation of

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success." *In re O'Farrell*, 853 F.2d 894, 904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988). In light of the foregoing and for the reasons expressed in the Answer, it is our determination that the Examiner has established a *prima facie* case of obviousness within the meaning of § 103 which Appellants have failed to successfully rebut. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

### **CONCLUSION**

The Examiner's rejection of claims 22-58 under 35 U.S.C. § 103(a) over the combined teachings of Aaslyng and Audousset is affirmed.

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### Time period for response

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

*Edward C. Kimlin*  
EDWARD C. KIMLIN  
Administrative Patent Judge

*Catherine Timm*  
CATHERINE TIMM  
Administrative Patent Judge

  
JEFFREY T. SMITH  
**Administrative Patent Judge**

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Appeal No. 2004-0795  
Application No. 09/600,134

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WASHINGTON, DC 20005



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OCT 21 2004  
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UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,134	09/11/2000	Gerard Lang	05725.0654	8900
7590	09/14/2004			
Finnegan Henderson Farabow Garrett & Dunner 1300 I Street NW Washington, DC 20005				EXAMINER ELHILLO, EISA B
				ART UNIT 1751
				PAPER NUMBER

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Docketed 9/14/4 Attorney  
Case 52251.0654  
Due Date 11/14/04 11/14/04  
Action Litigation  
By *[Signature]*

SEARCHED  
SEP 16 2004  
FILED  
GARRETT & DUNNER, LLP

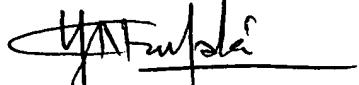
O I P E  
OCT 27 2004  
PATENT & TRADEMARK OFFICE  
U.S. Patent and Trademark Office

<b>Notice of Abandonment</b>	Application No.	Applicant(s)
	09/600,134	LANG ET AL.
	Examiner	Art Unit
	Eisa B Elhilo	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.  
 (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.  
 (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
     (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).  
 (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).  
 (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).  
 (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).  
 (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
     The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.  
 (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).  
 (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.  
 (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on 8/27/2004 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below.

  
 YOGENDRA N. GUPTA  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 1700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.